

Exhibit 125
to
Affidavit of Daniel M. Reilly
in Support of Consolidated Response to
Statements in Support of the Proposed Settlement

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), *et al.*

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786/2011

Assigned to: Kapnick, J.

**AFFIRMATION OF
JOHN C. COATES IV**

I, John C. Coates IV, hereby affirm under the penalty of perjury that the following is true and correct:

1. I have reviewed the Settlement Proponents' briefs in support of the Settlement Agreement and references to my deposition testimony therein.
2. I submit this affidavit to ensure that the Court is presented with a full and accurate record on the opinions I intend to present at trial of this matter.
3. The Settlement Proponents' references to my deposition testimony are materially incomplete and misleading. In particular, the Settlement Proponents distort my testimony when they state that my best estimate of the likelihood of a court imposing successor liability on Bank of America is between 45% and 65%.
4. In fact, in my deposition testimony, I repeatedly stated that I was not then offering a bottom line conclusion about the probability of success on the successor liability claim and that any probability estimate that I could give would be based on facts as I remembered them from preparing a report in *MBIA Ins. Corp. v. Countrywide Home Loans, Inc.* – a report that was dated June 22, 2012. In addition, I testified that I had not had time to carefully read the recent opinion by Justice Bransten in that case.

5. Since reading the Settlement Proponents' briefs, I have done the following further analysis and offer the following clarifying statements:

a. I have reviewed Justice Bransten's analysis in the recent decision in *MBIA Ins. Corp. v. Countrywide Home Loans, Inc.*, Index. No. 602825/2008. I focused specifically on analysis of the factual record, including facts as alleged by both Bank of America and MBIA, as described in that opinion, as they relate to elements of New York de facto merger doctrine. I reviewed these descriptions of factual allegations because they reflect the kind of factual claims as they relate to New York de facto merger doctrine as it was at the time that Bank of New York as Trustee entered into the Settlement Agreement in this case, and could have been tested and/or verified by the Trustee at that time.

b. As I stated during my deposition, I have not done the work I think the Trustee should have done with respect to the analysis and probability weighting concerning the successor liability issue. For that reason, I am not prepared to offer a bottom line conclusion--nor should the Settlement Proponents inaccurately suggest that I have done so. However, since my deposition, I have considered the issue of probability weighting and have re-examined the case materials with an eye towards quantifying the relative probabilities, as they existed at the time the Trustee filed its Verified Petition.

c. Having reviewed facts reflected in my June 2012 report, and based on the foregoing analysis, my best estimate of the likelihood of a court imposing successor liability on Bank of America on the ground of de facto merger and/or assumption of liability is approximately between 65% and 75%. That percentage reflects an estimate of the probability of success as of the time the Trustee filed its Verified Petition. I do not believe that it would have been a reasonable reading of New York law to conclude that it would prevent claimants from recovering against Bank of America Corporation on otherwise valid claims against Countrywide and its subsidiaries.

d. Were the Court to consider this issue in light of the recent decision in *MBIA Ins. Corp. v. Countrywide Home Loans, Inc.*, Index. No. 602825/2008, the probability of success would be higher.

e. Furthermore, as discussed in my expert reports, but not identified by Settlement Proponents in their briefs, Bank of America's solvent subsidiary serving as Master Servicer has contract-based servicing-related liability, and I believe there is a zero percent chance that such liability would be discounted by the risk that Countrywide may have insufficient assets to pay its separate liabilities.

Dated this 9th day of May, 2013.



John C. Coates IV